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Supreme Court of the United States

OCTOBER TERM, A. D. 1940.

No. 777

PEOPLE OF THE STATE OF ILLINOIS, ex rel GARFIELD R. LEAF, County Treasurer, Ex-officio County Collector, Lake County, Illinois,

Petitioner,

v.

E. R. ORVIS,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF ILLINOIS AND BRIEF IN SUPPORT THEREOF.

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NO.

PEOPLE OF THE STATE OF ILLINOIS, ex rel GARFIELD R. LEAF, County Treasurer, Ex-officio County Collector, Lake County, Illinois,

Petitioner,

v.

E. R. ORVIS,

Respondent.

PETITION FOR WRIT OF CERTIORARI.

To the Honorable Chief Justice and Associate Justices of the Supreme Court of the United States:

Your petitioner, People of the State of Illinois, *ex rel* Garfield R. Leaf, County Treasurer, *Ex-officio* County Collector, Lake County, Illinois, respectfully prays for the issuance of a writ of certiorari herein, directed to the Supreme Court of the State of Illinois, to review a certain final decision of said Supreme Court of the State of

Illinois, the opinion and decision having been rendered and filed on October 11, 1940, and a petition for rehearing in said matter having been denied on December 4, 1940. A certified transcript of the record in this case, including the proceedings in the Supreme Court of Illinois, together with a supporting brief annexed hereto, are filed herewith in this Court within three (3) months after denial of said petition for rehearing by said Supreme Court of the State of Illinois.

I.

Summary and Short Statement of the Matter Involved.

Grant Community High School District No. 124, in Lake County, Illinois, issued $54,000 Funding Bonds in 1931, to pay a judgment entered against it on account of material and equipment furnished in the construction of a schoolhouse (R. 18, 19). Respondent filed objections in the County Court of Lake County, Illinois, to taxes extended against his property in the year 1932 to pay interest on said bonds. Upon hearing, the County Court sustained the tax but on appeal to the Supreme Court of Illinois, the tax was held void. (*People* v. *Orvis*, 358 Ill. 408, 193 N. E. 213). After this decision the General Assembly of the State of Illinois passed an act validating the bonds which became effective July 1, 1935 (R. 36, 37 and pages 21-22, Appendix B).

In 1936 The Ohio National Life Insurance Company, the owner of certain of the bonds, brought suit against the School District in the District Court of the United States for the Northern District of Illinois, Eastern Division No. 45263, to recover judgment for past due interest on said bonds (R. 20, 26-29). In the complaint filed the validating

act was set up (R. 28), and by the answer the validity of the bonds and the validating act were placed in issue (R. 29-30). The District Court acquired jurisdiction of the parties, the subject matter and the cause. On June 30, 1936, after a full hearing before the Court, judgment was entered in favor of the insurance company for the face amount of all interest coupons then past due (R. 30). See Appendix D, page 28. The School District did not appeal from said judgment. Subsequently the School District paid the judgment (R. 22).

Thereafter, in 1939, the petitioner moved the County Court of Lake County, Illinois, for a judgment against the property of the respondent by reason of his failure to pay a tax extended against his property for the year 1938 to pay interest on said bonds (R. 1, 34). The respondent objected to the tax on the ground that the bonds were void (R. 2-3). Petitioner thereupon set up the District Court judgment of June 30, 1936 (R. 30), see Appendix D, page 28, and contended that it was an adjudication of the validity of the bonds (R. 20). The County Court of Lake County, Illinois, sustained the tax (R. 25). Appeal was prayed to the Supreme Court of the State of Illinois (R. 25). In that Court petitioner again contended that the validity of the bonds was adjudicated by the United States District Court case, that such judgment was *res judicata* as to the validity of the bonds, and that said judgment was binding on the taxpayers of the School District (R. 35). The Supreme Court of Illinois refused to recognize the District Court judgment and stated, "this court cannot recognize the claim of appellees [the County Collector and Petitioner herein] that the decision of the Federal court is controlling here" (R. 40). As a result, on October 11, 1940, the Supreme Court of Illinois overruled the County Court and reversed and remanded the cause. The opinion was modified and the petition for rehearing was denied on December 4, 1940 (R. 47).

This petition for certiorari is filed to procure a review of this decision of the Illinois Supreme Court.

II.

Basis on Which it is Contended the Supreme Court of the United States Has Jurisdiction to Review the Judgment in Question.

The jurisdiction of this Court is based on Section 237 (b) of the Judicial Code (28 U. S. C. A. 344 (b)) which reads in part as follows:

> "It shall be competent for the Supreme Court, by certiorari, to require that there be certified to it for review and determination * * * any cause wherein a final judgment or decree has been rendered or passed by the highest court of a State in which a decision could be had * * * where any title, right, privilege, or immunity is specially set up or claimed by either party under the Constitution, or any treaty or statute of or commission held or authority exercised under, the United States; * * *"

1. The decision of the Supreme Court of the State of Illinois in this case of *People* v. *Orvis*, 374 Ill. 536, 30 N. E. (2) 28, rendered October 11, 1940, and as modified on denial of petition for rehearing December 4, 1940, is a final judgment of the highest Court of the State of Illinois in which a decision could be had. Said decision held certain bonds void and the tax levied to pay the same uncollectible.

2. The judgment of the United States District Court, for the Northern District of Illinois, Eastern Division, in the case of *Ohio National Life Insurance Company* v. *Grant Community High School District No. 124, Lake County, Illinois*, rendered June 30, 1936, which held that the bonds in question are valid, is a right, specially set up by peti-

tioner under authority exercised under the United States. A duly authenticated copy of said judgment was introduced at the hearing in this case before the County Court of Lake County, Illinois (R. 20, Appendix D, page 28).

3. It was the duty of the petitioner to set up the District Court judgment adjudicating the validity of the bonds since he is the officer designated by law to collect taxes for said School District (Chap. 120, Sec. 706, Illinois Revised Statutes 1939). See Appendix A.

4. The petitioner introduced in evidence said District Court judgment holding the bonds valid (R. 20), and called it to the attention of the County Court, and also called it to the attention of the Illinois Supreme Court, both on appeal (opinion of Court, 374 Ill. 536 at 538, 30 N. E. (2) 28 at 29, Appendix B, pages 17-18), and in the petition for rehearing (R. 42-44), nevertheless, the Supreme Court of Illinois expressly refused to recognize said District Court judgment.

5. The failure of the Supreme Court of Illinois to give full faith and credit to said District Court judgment, using language as follows:

> "this court cannot recognize the claim of appellees that the decision of the federal court is controlling here.",

is in violation of Revised Statutes, 905, 28 U. S. C. A., 687, which requires that judgments of the Federal courts in a state shall have the same dignity in the courts of that state as those of its own courts.

6. The failure of the Supreme Court of Illinois to recognize the judgment of the United States District Court rendered June 30, 1936, is contrary to the following deci-

sions of this Court: *Stoll* v. *Gottlieb* (1938), 305 U. S. 165, 83 L. ed. 104; *Dupasseur* v. *Rochereau*, 88 U. S. 130, 22 L. ed. 588; *Crescent City, etc. Co.* v. *Butchers Union, etc.*, 120 U. S. 141, 30 L. ed. 614, and *Motlow* v. *Missouri*, 295 U. S. 97, 79 L. ed. 1327.

III.

The Questions Presented.

1. May the Supreme Court of the State of Illinois hold certain bonds void in a tax objection case by expressly refusing to recognize the validity of a prior judgment entered by the District Court of the United States sustaining the validity of the same bonds where said District Court had jurisdiction of the parties, the subject matter and the cause?

2. Is a judgment of the District Court holding certain school bonds valid, *res judicata* as to the validity of said bonds so as to bind taxpayers of the school district in a subsequent proceeding attacking the validity of the tax extended to pay said bonds?

IV.

Reasons Relied Upon for Allowance of the Writ.

The Supreme Court of Illinois, in holding certain bonds void in a proceeding by the state against the taxpayer, expressly refused to recognize the validity of a prior United States District Court final judgment, holding the same bonds valid, entered in a case instituted by a bondholder against the school district, and in which such District Court had jurisdiction of the parties, the subject matter and the cause.

Wherefore, your petitioner prays that a writ of certiorari be issued out of and under the seal of this Court,

directed to the Supreme Court of the State of Illinois sitting at Springfield, Illinois, commanding said Court to send to this Court on a day to be designated, a full and complete transcript of the record and all proceedings of the Supreme Court of the State of Illinois had in this cause, to the end that this cause may be reviewed and determined by this Court; that the judgment of the Supreme Court of the State of Illinois reversing and remanding the order of the County Court of Lake County, Illinois, be reversed; and that your petitioner be granted such other and further relief as may seem proper.

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BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI.

Opinions Below.

No opinion was filed by the County Court of Lake County, Illinois, but a memorandum of its decision appears in the record, pages 23 to 25. The opinion of the Supreme Court of the State of Illinois is reported in 374 Ill. 536, 30 N. E. (2d) 28. (Appendix B.)

Jurisdiction.

The jurisdiction of this Court is invoked under Section 237 (b) of the Judicial Code as amended. 28 U. S. C. A. 344 (b).

The Supreme Court of the State of Illinois (being the highest Court of the State of Illinois), on October 11, 1940, reversed and remanded a judgment entered by the County Court of Lake County, Illinois. Petition for rehearing was duly filed and said petition was denied on December 4, 1940.

A certified transcript of record, the petition for the issuance of a writ of certiorari, and a supporting brief annexed thereto are filed herein with the clerk of the Court within three (3) months after denial of said petition for rehearing by the Supreme Court of Illinois.

Statement of the Case.

The essential facts have been fully set forth in the petition under the caption "Summary and Short Statement of the Matter," which is hereby adopted. Any necessary elaboration of the facts involved will be covered in the argument to follow.

Specification of Assigned Errors.

The Supreme Court of the State of Illinois erred:

1. In reversing the judgment of the County Court of Lake County, Illinois.

2. In disregarding the validity of a prior judgment duly entered by the District Court of the United States, for the Northern District of Illinois, Eastern Division.

3. In holding certain bonds void, which had theretofore been adjudicated valid and binding by judgment of the District Court in a proceeding wherein said Court had jurisdiction of the subject matter, the parties and the cause.

4. In failing to hold that the decision of the District Court was *res judicata* as to the validity of the bonds.

5. In failing to recognize the provisions of Section 905, United States Statutes, 28 U. S. C. A. 687.

SUMMARY OF ARGUMENT.

I.

Petitioner, by virtue of Section 237 (b) of the Judicial Code, as amended, is entitled to have a writ of certiorari issued.

II.

The judgment of the United States District Court, for the Northern District of Illinois, Eastern Division, in the case of Ohio National Life Insurance Company v. Grant Community High School District No. 124, is res judicata as to the matters involved in this case and the validity of the bonds, questioned therein, and is binding on the taxpayers of said school district.

ARGUMENT.

May It Please the Court:

I.

The District Court of the United States in 1936 entered judgment in favor of a bondholder against the school district for interest due on certain of its bonds. The validity of said bonds was an issue in the case. Subsequently the Supreme Court of Illinois, in this case held the identical bonds void and in so holding refused to recognize the validity of the judgment of the District Court in express language as follows:

> "this court cannot recognize the claim of appellees that the decision of the Federal court is controlling here."

This Court has repeatedly held that where the highest Court of a State disregards a judgment or decree of a Court of the United States, a federal question is thereupon raised which is reviewable by this Court under Section 237 (b) of the Judicial Code, 28 U. S. C. A. 344 (b).

In the recent case of *Stoll* v. *Gottlieb* (1938), 305 U. S. 165, 83 L. ed. 104, this Court stated:

> "This certiorari was allowed to review a judgment of the Supreme Court of Illinois. That court had denied effect to a plea of *res judicata* arising from orders of a district court in bankruptcy. Provisions declaring the supremacy of the Constitution and the extent of the judicial power and authorizing necessary and proper legislation to make the grants effective confer jurisdiction upon this Court to determine the effect to be given decrees of a court of the United States in state courts. As the contention is that the

> ruling below disregarded decrees of a court of the United States it raised a federal question reviewable under No. 237 (b) of the Judicial Code, 28 U. S. C. A. No. 344 (b)."

See also *Dupasseur* v. *Rochereau*, 88 U. S. 130, 22 L. ed. 588; *Crescent City etc. Co.* v. *Butchers Union etc.*, 120 U. S. 141, 39 L. ed. 614; *Motlow* v. *Missouri*, 295 U. S. 97, 79 L. ed. 1327; United States Revised Statutes, Section 905, 28 U. S. C. A. 687.

II.

After the decision of the Supreme Court in 1934, in the case of *People* v. *Orvis*, 358 Ill. 408, 193 N. E. 213, in which the Supreme Court held (in a tax objection proceeding between the State and the taxpayer) that a tax levied to pay these bonds was void, the General Assembly of the State of Illinois passed an act, in 1935, which validated all of the proceedings leading up to the issuance of said bonds. The District Court case was not filed until after the validating act was in full force and effect. In the complaint filed in the District Court the validating act was set forth in full, and during the trial of the case was considered by the Court. The effect of the decision of the District Court, which entered a judgment for the bond interest then past due, was that the bonds were validated by said act of the General Assembly and were a valid and binding obligation of the School District. Prior to the District Court case the validating act had not been construed or adjudicated by any Court.

In total disregard of the judgment of the District Court the Supreme Court of Illinois erroneously stated in this case:

> "When this cause was presented to the Federal District Court the law in this State was that these bonds are illegal."

Such statement could only have been true if the validating act in question had been held void theretofore by the State Court. It had not, and, therefore, the Federal District Court had just as complete original jurisdiction to determine that question, as would the State Court had the suit been brought there. The jurisdiction of both Courts was concurrent to entertain the cause. The Federal Court having obtained jurisdiction, its judgment is valid, entitled to full faith and credit and *res judicata* in any other court. In *Stoll* v. *Gottlieb, supra,* Mr. Justice Reed stated at page 107:

> "The Congress enacted, as one of the earlier statutes, provisions for giving effect to the judicial proceedings of the courts. This has long had its present form. This statute is broader than the authority granted by Article Four, section one, of the Constitution to prescribe the manner of proof and the effect of the judicial proceedings of states. *Under it the judgments and decrees of the Federal courts in a state are declared to have the same dignity in the courts of that state as those of its own courts in a like case and under similar circumstances.*" (Italics ours.)

The respondent was bound by the decision of the District Court because he is a taxpayer of the Grant Community High School District No. 124, in Lake County, Illinois, which was the defendant in the United States District Court case. *Harmon* v. *Auditor of Public Accounts,* 123 Ill. 122, 13 N. E. 161; *The People* v. *C. B. & Q. R. R. Co.,* 247 Ill. 340 at 345, 93 N. E. 422 at 424; *Pear* v. *City of East St. Louis,* 273 Ill. 501 at 506, 113 N. E. 60 at 62; *Worley* v. *Idleman,* 285 Ill. 214 at 221, 120 N. E. 472 at 475; *People* v. *Ford,* 289 Ill. 550, 124 N. E. 549; *People* v. *Clark,* 296 Ill. 46, 129 N. E. 583; *People* v. *L. & N. R. R. Co.,* 350 Ill. 274 at 277-278; 183 N. E. 233 at 235.

In the case of *People* v. *Ford,* 289 Ill. 550 at 555, 124 N. E. 549 at 552, the Illinois Supreme Court said:

> "A judgment against a municipality for an obligation is binding upon every citizen who is compelled to discharge the obligation, and every taxpayer is a real, though not a nominal, party to the judgment and cannot dispute its validity. Freeman on Judgments (3d ed.) 178; *Harmon* v. *Auditor of Public Accounts,* 123 Ill. 122; *County of DeWitt* v. *Leeper,* 209 *id.* 133; *North Fork Drainage District* v. *Rector Special Drainage District,* 266 *id.* 536."

In the case of *Harmon* v. *Auditor of Public Accounts,* 123 Ill. 122, 13 N. E. 161, the Court citing from Freeman on Judgments:

> "A judgment against a county, or its legal representatives, is a matter of general interest to all its citizens, is binding upon the latter, though they are not parties to the suit. A judgment for a sum of money rendered against a county imposes an obligation against the citizens which they are compelled to discharge. Every tax-payer is a real, though not a nominal, party to such judgment. If, for the purpose of providing for its payment, the officers of the county levied and endeavored to collect the tax, none of the citizens can, by instituting proceedings to prevent the levy or enforcement of the tax, dispute the validity of the judgment nor re-litigate any of the questions which were or which could have been litigated in the original action against the county."

This is the leading case in Illinois, and is referred to in later cases in Illinois and other states as one which correctly states the law that a judgment against a municipality is binding on all of the taxpayers therein.

In the case of *Pear* v. *City of East St. Louis,* 273 Ill. 501, 113 N. E. 60 at 62, a suit was instituted by a taxpayer to declare void a franchise held by a water company. Prior to the institution of that suit there had been a decision by a

Federal Court in which the water company had instituted action against the City of East St. Louis to have the ordinance declared valid. The Federal Court judgment held the ordinance valid and the Supreme Court of Illinois, at page 506 said:

> "The suit in the Federal Court involved the question whether the city was bound by ordinance No. 1972, and the decision of that question depended upon whether it was a legal ordinance and whether it had the power to repudiate and repeal it. This was a matter of general interest to all the tax-payers of the city, and though complainant was not personally made a party to that suit, his rights as a tax-payer will be deemed to have been as effectually presented and protected as if he had been personally present. The issues in that case involved the right of the tax-payers to be relieved of the obligations imposed by the ordinance, which is the same question involved in this case. It is not claimed complainant has sustained or will sustain any wrong or injury different from that sustained by the tax-payers of the city generally. The precise questions raised in this case were or might have been adjudicated in the case in the Federal court. Complainant was a party to that suit by representation and the decree is binding upon him. *Harmon* v. *Auditor of Public Accounts*, 123 Ill. 122; *Hale* v. *Hale*, 146 *id.* 227; *McCampbell* v. *Mason*, 151 *id.* 500; *County of DeWitt* v. *Leeper*, 209 *id.* 133; *Healy* v. *Deering*, 231 *id.* 423; *Ward* v. *Field Museum*, 241 *id.* 496; *People* v. *Harrison*, 253 *id.* 625."

In conclusion, we submit that if the Supreme Court of Illinois is permitted to disregard said judgment of the District Court, the right of a citizen of the United States to have his rights adjudicated by a Court set up under authority of the United States, is in effect abrogated.

For the foregoing reasons it is respectfully submitted that the writ of certiorari prayed by the petitioner should be granted.

Respectfully submitted,

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APPENDIX A.

Section 225 of "An Act to revise the law in relation to the assessment of property and the levy and collection of taxes, and to repeal certain Acts herein named" which was filed May 17, 1939. (Sec. 706, Chap. 120, Ill. Rev. Stats. 1939) provides as follows:

"At any time after the first day of September next after all of such delinquent taxes on lands and lots shall become due in any year, or next after any taxes are paid under protest in any year, the collector shall publish an advertisement, giving notice of the intended application for judgment for sale of such delinquent lands and lots, and for judgment fixing the correct amount of any tax paid under protest, in a newspaper published in the township or road district, as the case may be, in which the real estate on which the delinquent taxes are due, is located, if such there be, and if there be no such newspaper published in said township or road district, then in some newspaper in the same county as said township or road district, to be selected by the county treasurer: * * *"

APPENDIX B.

Docket No. 25558 Agenda 31 February, 1940.

The People ex rel. Garfield R. Leaf, County Collector, Appellee, *v.* E. R. Orvis, Appellant.

Mr. Justice Stone delivered the opinion of the court:

A default judgement was entered on October 2, 1939, in the county court of Lake county, against appellant, E. R. Orvis, for delinquent taxes. On October 5, 1939, he filed a motion to vacate the judgment. This motion was denied on the ground of lack of meritorious defense shown, and the defendent appeals. The grounds set out in the motion are that the board of education of Grant Community High School District No. 124, Lake county, Illinois, had no right to levy a tax to pay principal and interest due on a $55,000 bond issue, since this court had determined, in 1934, in a case in which appellant and others were parties, (*People* v. *Orvis,* 358 Ill. 408,) that the claims upon which the $55,000 bond issue were predicated created a debt in excess of the statutory limit, and so were null and void. The objections urge that thereafter said board of education could not order the tax spread by the county clerk of Lake county. It is also pointed out that since the decision in the *Orvis case* no tax has been levied to collect either principal or interest of the bonds until the year 1938, when the clerk again extended the tax, which he had no right to do.

At the hearing upon appellant's motion counsel for appellee brought to the court's attention the validating act of June 6, 1935, and certified copies of the complaint,

answer and judgment entered in the case of the *Ohio Nat. Life Ins. Co.* v. *Board of Education of Grant Community High School District No. 124, County of Lake and State of Illinois,* in the District Court of the United States for the Northern District of Illinois, Eastern Division, which was decided June 30, 1936. This case was a suit by a bondholder for interest due on certain of these bonds, as evidenced by interest coupons, and a judgment in the case was entered for plaintiff in the sum of $3025. This case will hereinafter be referred to.

Appellant contends, here, that the county court erred in finding that appellant had not sustained his objections submitted with his motion to vacate; that the case of *People* v. *Orvis, supra,* is *res judicata* of the instant case, and the validating act of 1935 is void.

Appellee contends that the decision of this court in *People* v. *Orvis, supra,* does not constitute an adjudication which would prevent validation of the bonds by the legislature; further that the judgment of the District Court of the United States in the case of the *Ohio Nat. Life Ins. Co.* against the high school district is *res judicata* as to the issues in this case, and if this were not so the validating act of 1935 rendered these bonds legal and, therefore, to be paid by taxation.

Pursuant to a special election held December, 1929, in the Lake county school district No. 124, bonds were issued in the sum of $72,000 to purchase a site and erect a school building. The proceeds of the bond issue were insufficient to complete the building and equipment and on February 16, 1931, the board of education passed a resolution that bonds be issued to the amount of $55,000 to pay the remaining outstanding obligations. These bonds were issued

without a vote of the people of the district. Fifty-four thousand dollars of these bonds were sold and all of the indebtedness of the high school district was paid out of the proceeds. The statutory limit of two and one-half per cent of the value of the taxable property in the district, beyond which school districts with a population of less than 200,000 are prohibited by statute from becoming indebted without an election, (Cahill Stat. 1933, chap. 120, par. 362 (2),) was exceeded by the issuance of the $55,000 of bonds, the entire amount being in excess of that limitation.

In *People* v. *Orvis, supra*, Orvis objected to taxes levied on his property for the year 1932 to pay a portion of this same $55,000 bond issue. His objections were overruled by the county court and he appealed. The People contended in that case that the bonds were issued pursuant to an act of April 30, 1931, (Cahill Stat. 1933, chap. 122, par. 446 (10),) which made an election unnecessary. The first section of said act provides that where, prior to March 15, 1931, any school district has provided for the issue of bonds "for any purpose now authoried by law" and such bonds, including existing indebtedness, exceed two and one-half per cent of the value of taxable property therein, then any such bonds may be executed and delivered to a purchaser notwithstanding such excess.

In the prior *Orvis case* it was pointed out that the claims to pay which the bonds were issued, raised the indebtedness of the district beyond the two and one-half per cent limit prescribed by statute, and therefore the claims were illegal. It was there held that, by its terms, the 1931 act would apply where the board anticipated the need of funds for a lawful purpose and provided for a bond issue in advance of incurring any debt beyond the statu-

tory limit, but that the authority to issue bonds in excess of the two and one-half per cent limit "for any purpose now authorized by law," did not authorize the issue of bonds to pay claims in excess of the statutory limit; that their payment was not a purpose "now authorized by law," and that the $55,000 bond issue was not within the terms of the 1931 act and was illegal.

Also in the prior *Orvis case* the People relied on the act of May 1, 1933, (Cahill Stat. 1933, chap. 122, par. 446 (13),) as validating the bonds. Section 1, so far as pertinent here, provides: "In all cases where the governing body of any school district * * * has issued bonds for the purpose of funding and paying * * *, any legal claims duly audited and allowed by the governing body, with or without an election, and the * * * legal claims so funded, have been paid and canceled, each such * * * funding bond issue is hereby validated and recognized as a valid and binding obligation of the school district issuing the same." This court held, concerning this act, that if it were otherwise valid, it could, under its terms, be applied only to bonds that were issued "for the purpose of funding and paying legal claims," and that inasmuch as the claims paid were illegal, the validating act of 1933 had no application to bonds issued for the payment of such claims.

After the adjudication of this court in the prior *Orvis case*, another so-called validating act was passed in 1935, (Ill. Rev. Stat. 1937, chap. 122, par. 406y,) evidently intended to cover this situation. Appellant urges that it is void. It provides: "Whenever any person, firm or corporation shall have rendered services or furnished materials to any school district for the corporate purposes of the district and such services or materials shall have been paid for by or out of the proceeds of bonds issued

by such school district with or without an election, and the amount of the claims for such services or materials, together with other indebtedness, exceeded in whole or in part two and one-half per cent (2½%) of the assessed value of taxable property of the district at the time such services were rendered or materials furnished, the issuance of such bonds shall be deemed a validation of such claims in so far as said claims, together with other indebtedness, did not exceed five per cent (5%) of such value at the time they were incurred and at the time such bonds were issued. All proceedings had in connection with the issuance of such bonds are hereby validated and such bonds in so far as the same or the proceeds thereof were used to pay such validated claims are hereby declared to be valid and legally binding obligations of the district."

It is settled that the General Assembly may, by statute, validate an irregular or defective exercise of a power where the power already existed and the proceeding sought to be cured was not one of the fundamentals of the power exercised. Conversely, the General Assmbly cannot, by a curative act, make a void proceeding valid. (*People* v. *Southern Railway Co.*, 367 Ill. 389; *People* v. *Chicago and Eastern Illinois Railway Co.*, 365 *id.* 202; *People* v. *Padley*, 340 *id.* 314; *People* v. *Chicago, Milwaukee and St. Paul Railway Co.*, 321 *id.* 499; *Maulding* v. *Skillet Fork Drainage District*, 313 *id.* 216; *Roberts* v. *Eyman*, 304 *id.* 413.) School districts have only such taxing power as is given by statute. As we have stated, this school district was prohibited by statute from becoming indebted, without an election, beyond two and one-half per cent of the assessed value of the property of the district, and it had no power to issue bonds to pay claims or debts in excess of that limitation. That question was clearly presented in the prior *Orvis case* and the judgment of this court in that

case was that these bonds were invalid because the claims for the payment of which they were issued were invalid, as beyond the power of the district to incur.

The so-called validating act of 1935 was an attempt on the part of the General Assembly to say that the claims against the district, and the bonds issued to pay them, held by this court to be invalid, shall nevertheless be deemed valid. The language is that "the issuance of such bonds shall be deemed a validation of such claims," and declares that the bonds thus issued are valid. There was no attempt to enlarge the powers to create indebtedness against the district, but an outright declaration that invalid claims and bonds issued therefor shall be deemed valid. This was beyond the power of the General Assembly to enact. *Green* v. *Hutsonville School District*, 356 Ill. 216.

Cooley's Constitutional Limitations, seventh edition, page 531, states: "If the thing wanting or which failed to be done, and which constitutes the defect in the proceeding, is something the necessity for which the legislature might have dispensed with by prior statute, then it is not beyond the power of the legislature to dispense with it by subsequent statute. And if the irregularity consists in doing some act, or in the mode or manner of doing some act, which the legislature might have made immaterial by prior law, it is equally competent to make the same immaterial by subsequent law." Also, at pages 135 and 136 of this work, the writer points out: "It is always competent to change an existing law by a declaratory statute; and where the statute is only to operate upon future cases, it is no objection to its validity that it assumes the law to have been in the past what it is now declared that it shall be in the future. But the legislative action cannot

be made to retroact upon past controversies, and to reverse decisions which the courts, in the exercise of their undoubted authority, have made; for this would not only be the exercise of judicial power, but it would be the exercise in the most objectionable and offensive form, since the legislature would, in effect, sit as a court of review to which the parties might appeal when dissatisfied with the rulings of the courts." It is one of the fundamental principles of our government that the legislative power shall be separate from the judicial. If the General Assembly would prescribe a different rule for the future from that which the courts enforce, it must be done by statute applicable in the future, and cannot be done by setting aside final judgments of the courts. Such leaves the law unchanged and has the effect merely of seeking to require that the courts construe it not according to judicial judgment but according to later legislative will.

The case of *Chicago and Eastern Illinois Railroad Co.* v. *People*, 219 Ill. 408, is not unlike this case. There, objection to a tax levy had been overruled by the county court, and on appeal this court reversed the county court and held the tax invlaid on the ground of failure to substantially comply with a statutory requirement or limitation on the exercise of a grant of power to levy taxes. It was held that such is not a mere irregularity but renders the tax invalid. (*Chicago and Eastern Illinois Railroad Co.* v. *People*, 213 Ill. 497; *Chicago, Burlington and Quincy Railroad Co.* v. *People id.* 458.) After entry of the judgment of this court and prior to filing of the remanding order in the county court, the General Assembly passed a so-called validating act by which it was declared that the tax involved should be considered legal and valid "anything in the law of this State to the contrary not-

withstanding." The county court accordingly overruled the objections to the tax and the cause was again appealed and this court held that the original case was a final determination of the question as to the validity of the levy and that the validating act gave no power to the trial court to enter any other than the judgment directed on remandment.

In the case before us there has been no defect, as to procedure, in the issuance of the bonds or in the allowance of these claims, but the bonds and the claims for which they were issued were invalid and beyond the power of the school district to incur. This court so held, and under that judgment these bonds and claims were beyond the power of the General Assembly to validate. The tax objected to here is for the purpose of paying these invalid bonds. Appellee contends that in the *Ohio Nat. Life Ins. Co. case,* hereinbefore referred to, the District Court found the bonds were binding obligations of the school district; that its judgment was not appealed from and became final and binding upon appellee district and the taxpayers, under which judgment appellees must levy a tax to pay those bonds; that appellant and other taxpayers are bound by representation in the District Court and that the judgment of that court is *res judicata* concerning the validity of the bonds. It is also said that the prior *Orvis case* and the curative act of 1935 were before the District Court at the time the judgment was entered.

It has been provided in the Federal Judiciary act, since 1789, that "the laws of the several States, except where the constitution, treaties or statutes of the United States otherwise require or provide, shall be regarded as rules of decision in trials at common law, in the courts of the

United States, in cases where they apply." I Stat. at Large, 92, Chap. 20, sec. 34; Rev. Stat. sec. 721; U. S. C. A. title 28, sec. 725.

When this cause was presented to the Federal District Court the law in this State was that these bonds are illegal. Owing to this fact and the limitations of the Federal Judiciary act, this court cannot recognize the claim of appellees that the decision of the Federal court is controlling here.

We are of the opinion that the so-called validating act of 1935 is invalid, and that the decision in the prior *Orvis case,* that the claims and these bonds issued thereon are invalid, is *res judicata.*

It is said that the bondholders, who were not parties to that suit, are not estopped to urge their claims here. However that may be, the adjudication of this court that these bonds were invalid is *res judicata* as to that question. This being so, the county court erred in refusing to vacate the judgment and permit the filing of objections by appellant.

The judgment is reversed and the cause remanded to that court, for further proceedings not inconsistent with the views herein expressed.

Reversed and remanded, with directions.

Mr. Justice Shaw, specially concurring: I agree with the conclusion reached in this opinion but not with all that is said therein.

APPENDIX C.

United States Revised Statutes, Section 905, 28 U. S. C. A., Sec. 687:

"The acts of the legislature of any State or Territory, or of any country subject to the jurisdiction of the United States, shall be authenticated by having the seals of such State, Territory, or country affixed thereto. The records and judicial proceedings of the courts of any State or Territory, or of any such country, shall be proved or admitted in any other court within the United States, by the attestation of the clerk, and the seal of the court annexed, if there be a seal, together with a certificate of the judge, chief justice, or presiding magistrate, that the said attestation is in due form. And the said records and judicial proceedings, so authenticated, shall have such faith and credit given to them in every court within the United States as they have by law or usage in the courts of the State from which they are taken."

APPENDIX D.

Judgment of the United States District Court for the Northern District of Illinois, Eastern Division in the case entitled: *Ohio National Life Insurance Co.* v. *Board of Education of Grant Community High School District Number 124, County of Lake and State of Illinois.* Rendered June 30, 1936.

This day again came the parties to this suit by their attorneys respectively and the Court now hereafter hearing all the evidence adduced finds the issues for the plaintiff and assesses the plaintiff's damages at the sum of Three Thousand Twenty-five Dollars ($3,025.00) together with its costs and charges in this behalf expended therefore it is considered and

Ordered by the Court that the plaintiff do have and recover of and from the defendant the sum of Three Thousand Twenty-five Dollars ($3,025.00) together with its costs and charges in this behalf expended and have execution therefor.

It is ordered that leave be and the same is hereby given the plaintiff to withdraw coupons upon leaving photostatic copies in lieu thereof.

No. 777.

FILED
MAR 15 1941
CHARLES ELMORE CROPLEY
CLERK

IN THE

Supreme Court of the United States

October Term, 1940

PEOPLE OF THE STATE OF ILLINOIS EX REL. GARFIELD F. LEAF, COUNTY TREASURER, EX OFFICIO COUNTY COLLECTOR, LAKE COUNTY, ILLINOIS,

Petitioner,

vs.

E. R. ORVIS,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF ILLINOIS.

BRIEF FOR THE RESPONDENT IN OPPOSITION TO PETITION.

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Woodstock, Illinois,
Attorney for Respondent.

NELSON TROTTMAN,
400 West Madison Street,
Chicago, Illinois.
Of Counsel.

MC CORMICK AND HENDERSON, INC., CHICAGO

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IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1940

No. 777.

PEOPLE OF THE STATE OF ILLINOIS EX REL. GARFIELD F. LEAF, COUNTY TREASURER, EX OFFICIO COUNTY COLLECTOR, LAKE COUNTY, ILLINOIS,

Petitioner,

vs.

E. R. ORVIS,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF ILLINOIS.

BRIEF IN SUPPORT OF OPPOSITION TO PETITION FOR WRIT OF CERTIORARI.

To the Honorable Chief Justice and Associate Justices of the Supreme Court of the United States:

Opinions Below.

The opinion below of the Supreme Court of Illinois, is reported at 374 Ill. 536 (30 N. E. [2d] 28) and printed in the petition. The same court's opinion in the earlier *Orvis*

case is reported at 358 Ill. 408 (193 N. E. 199). Copy of that opinion is printed as an appendix hereto.

Jurisdiction.

The jurisdiction of this court is invoked under Section 237(b) of the Judicial Code (28 U. S. C. A. 344 [b]). In this branch of the petition petitioner says (p. 4, paragraph 2):

> "The judgment referred to of the Federal District Court of the Northern District of Illinois in the case of *Ohio National Insurance Company* v. *Grant Community High School District No. 124, Lake County, Illinois*, rendered June 30, 1936, which held the bonds in question as valid, is a right set up by petitioner", etc.

This judgment of the Federal District Court, appearing in "Appendix D" on page 28 of the petition was rendered June 30, 1936, and recites (Tr. 30):

> "This day again came the parties to this suit by their attorneys respectively and the Court now hereafter hearing all the evidence adduced finds the issues for the plaintiff and assesses the plaintiff's damages at the sum of Three Thousand Twenty-five Dollars ($3,025.00) together with its costs and charges in this behalf expended therefore it is considered and
>
> Ordered by the Court that the plaintiff do have and recover of and from the defendant the sum of Three Thousand Twenty-five Dollars ($3,025.00) together with its costs and charges in this behalf expended and have execution therefor.
>
> It is ordered that leave be and the same is hereby given the plaintiff to withdraw coupons upon leaving photostatic copies in lieu thereof."

No finding was made that bonds were valid. None of the bonds were apparently introduced in evidence, but coupons

were and leave was given plaintiff to withdraw them. Moreover, the parties were not the same.

Under this heading petitioner also says (in paragraph 5 on page 5):

> "The failure of the Supreme Court of Illinois to give full faith and credit to said District Court judgment, using language as follows:
>
> > 'This Court cannot recognize the claim of appellees that the decision of the Federal Court is controlling here,'
>
> is in violation of Revised Statutes 905, 28 U. S. C. A. 687 which requires that judgments of the Federal Courts in a state shall have the same dignity in the courts of that state as those of its own courts."

Not stated is the fact that in the former *Orvis* case the Supreme Court of Illinois had declared and held that the claims upon which this bond issue was founded were *illegal* and *void*, and that the bonds were also void; that full faith and credit need not be given a Federal Court judgment which is not *res adjudicata* because the parties are different; and the following announcement that the Supreme Court of Illinois had made:

> "In *Chicago and Eastern Illinois Ry. Co.* v. *People*, 219 Ill. 408, it had been held that when the Supreme Court had held a particular tax levy invalid the legislature was without power to afterward validate the levy and make the tax collectible."

Also overlooked is the fact that the former *Orvis* case is *res adjudicata* of the instant case. The court below said in this connection:

> "That the claims and these bonds issued thereon are invalid is *res adjudicata.*" (Copied from opinion of Supreme Court of Illinois as it appears on page 26 of Appendix B.)

This is because "when this cause was presented to the Federal District Court the law of this State was that these bonds are illegal." This is why the court below properly said:

> "Owing to this fact and the limitations of the Federal Judiciary Act, this Court cannot recognize the claim of appellees that the decision of the Federal Court is controlling here.
>
> "It is said that the bondholders who were not parties to that suit are not estopped to urge their claims here. However, that may be the adjudication of this Court that these bonds were invalid is *res adjudicata* as to that question." (Petitioner's Appendix "B," paragraphs 1, 2 and 3 on page 26.)

This holding was plainly right under the rule of *Erie R. R.* v. *Tompkins,* 304 U. S. 64, 58 S. Ct. 817, 82 L. Ed. 1188.

Questions Presented.

The real question presented is:

May the Federal District Court, in proceedings conducted in haste suggesting the absence of real adversary proceedings or active defense, in which the answer admits or expressly refrains from denying substantially all the allegations of the complaint, and to which no taxpayer was a party, notwithstanding the opinion rendered in prior proceedings in the Illinois Supreme Court in which that court declared of the claims in question that they "were illegal and void and the bonds issued were also void," and notwithstanding the settled law of Illinois that the legislature is without power to validate, retroactively, a void levy, nevertheless render a judgment against a taxing district, in a matter of purely state concern governed by State law, which will be *res adjudicata* as against objecting taxpayers of such

district and as such entitled to full faith and credit, even though directly contrary to the law of Illinois?

Statement.

Petitioner's statement (on pages 2 to 6) should be supplemented by calling attention to the following from the opinion below (printed as Appendix "B" of the Petition):

> "The first section of said Act (the first allegedly validating act[1]) provides that where, prior to March, 1931, any school district has provided for the issue of bonds for any purpose now authorized by law, and such bonds, including existing indebtedness, exceed two and one-half per cent of the value of taxable property therein, then any such bonds may be executed and delivered to a purchaser notwithstanding such excess." (Page 20 of Petitioner's Appendix "B.")

The Court below said further:

> "In this prior *Orvis* case it was pointed out that the claims to pay which the bonds were issued, raised the indebtedness of the district beyond the two and one-half per cent limit prescribed by statute, and therefore the claims were *illegal.*" (Italics ours; page 20 of Petitioner's Appendix "B.")

The opinion below further recites:

> "Inasmuch as the claims paid were illegal, the Validating Act of 1933[2] had no application to bonds issued for the payment of such claims. After the adjudication of this Court in the prior *Orvis* case another so-called validating act was passed in 1935 (Ill. Rev. Stat. 1937, Chap. 122, par. 406y)[3] evidently intended to cover this situation. Appellant urges that it is void." (Page 21 of Petitioner's Appendix "B.")

---

[1] The act of April 30, 1931, set out as Appendix B, below.

[2] The second allegedly validating act, set out as Appendix C hereto.

[3] The act here material. It is set out as Appendix D hereto.

Also the following:

> "It is also pointed out that since the decision in th*Orvis* case no tax has been levied to collect eithe principal or interest of the bonds until the year 193 when the clerk extended the tax which he had n right to do." (Page 18 of Appendix "B.")

The general statute in effect at the time (Cahill's Stat 1933, ch. 120, par. 362[2]) limited such bonds to two an one-half per cent of the value of taxable property in th district, except after an election as provided by the act.[1]

[1] This section providing for this limit is set out as Ap pendix A hereto.

ARGUMENT.

Petitioner refers (on page 12) to the complaint filed in the Federal District Court. Paragraph 3 of the complaint (Tr. 27) alleges:

> "That after said bonds had been duly issued and sold as aforesaid, certain questions arose in a tax objection suit to which the holders of said bonds were not parties concerning the validity of said bonds due to alleged irregularities in the proceedings had in connection with the issuance thereof; that thereafter a certain validating act was passed by the General Assembly of the State of Illinois, and approved on June 6, 1935, which provides as follows:" (then follows the Act of 1935.)
>
> "That by reason of said Validating Act all proceedings had in connection with the issuing of said bonds are expressly validated, and said bonds and the interest coupons thereto are valid and binding obligation of the defendant."

The answer admits the allegations of the complaint that plaintiff is the owner of bonds, the amount due, and that demand was made for payment of interest coupons, and denies that plaintiff is entitled to the relief prayed and prays to be dismissed. It is signed, "Charles Jacks, Attorney for Defendant." The certificate of the District Court Clerk shows that the complaint was filed "April 17-1935" and that judgment was entered "June 30-1936" (Tr. 30). The judgment of the District Court appears in full in the record herein (Tr. 30) and has been set out above (*supra*, p. 2). There is not a word in it affirmatively holding the coupons or bonds to be valid or binding.

The absence of any real denial in the defendant's pleading in the Federal Court suit and the unusual haste with

which this important litigation was thus disposed of at least suggest the absence of real adversary proceedings, and warrant the inference that the first *Orvis* case, 358 Ill. 408, 193 N. E. 199, was not very strongly pressed upon the presiding Judge of the District Court (Judge Wilkerson). One may surmise that if the former *Orvis* case and applicable Illinois decisions had been really pressed upon the Federal District Court, that Court would probably not have entered the judgment for the Ohio National Insurance Company against the Board of Education. Testimony herein was, however, given that this *Orvis* case was presented to the District Court (Tr. 32):

> "Charles E. Jack, witness (for appellee in State Court), was sworn and testified: That he appeared as attorney for Grant Community High School District No. 124 in the Federal Court, No. 45263; was present at the time arguments were had in connection with the entry of the decree in that case; the decision in the *Orvis* case reported in 358 Ill. 408, was read to Judge Wilkerson and discussed by Mr. Cassidy at the time of the hearing."

Charles E. Jack was the attorney for the Board of Education. One may justifiably assume that he was not very vigilant in protecting the District *taxpayers,* who had no representation and *were not parties to the action.* The Supreme Court of Illinois had declared that the claims upon which the bond issue was founded were "*illegal*" and "*invalid*" and the bond issue void.

It does not appear that the attention of the Federal Court was called to the earlier case of *Chicago and Eastern Illinois R. R. Co.* v. *People,* 219 Ill. 408-411, 76 N. E. 571, in which the court said:

> "The judgment rendered by this Court when this cause was first heard was a final adjudication that

> the tax in question was *invalid*. The legislature *could not thereafter validate this levy* and thereby make the tax collectible. Cooley's Const. Lim. (7th Ed.) 136-139; *Dobbins* v. *First National Bank*, 112 Ill. 553." (Italics ours.)

This was the law of the State of Illinois at the time of hearing in the Federal Court case. In the opinion below of the Supreme Court of Illinois in the instant case the law was stated in a few short words:

> "Conversely, the General Assembly cannot by a curative act make a void proceeding valid."

This statement is followed by the citation of six Illinois decisions, which are to the same effect:

People v. *Southern Railway Co.*, 367 Ill. 389, 11 N. E. (2d) 602;
People v. *Chicago and North Eastern Ry.*, 365 Ill. 202, 6 N. E. (2d) 119;
People v. *Padley*, 340 Ill. 314, 172 N. E. 763;
People v. *Chicago, Mil. & St. Paul Ry. Co.*, 321 Ill. 499, 152 N. E. 560;
Maulding v. *Skillet Fork Drainage Dist.*, 313 Ill. 216, 145 N. E. 227;
Roberts v. *Eyman*, 304 Ill. 413, 136 N. E. 736.

The Illinois rule was also said in *People* v. *Sandberg Co.*, 282 Ill. 245 (at page 258), 118 N. E. 469, that

> "when the Supreme Court held a particular tax levy invalid the legislature was without power to afterward validate the levy and make the tax collectible."

The law thus announced by the Illinois Supreme Court was binding on the Federal Courts. *Erie R. R.* v. *Tompkins*, 304 U. S. 64, *supra*, 58 S. Ct. 817, 82 L. Ed. 1188.

In the complaint filed in the Federal District Court case, in paragraph 2, it is alleged (Tr. 27):

> "That said bonds were issued pursuant to proceedings duly had for that purpose and said bonds were issued for the purpose of paying certain claims for services rendered and materials furnished to the District, for the construction, equipment and maintenance of schools in said District; that simultaneously with the issuance of said bonds, said claims in a like amount were paid and cancelled."

In paragraph 3, it is alleged:

> "That after said bonds had been duly issued and sold as aforesaid, certain questions arose in a tax objection suit to which the holders of said bonds were not parties, concerning the validity of the said bonds due to irregularities in the proceedings had in connection with the issuance thereof; that thereafter a certain validating act was passed by the General Assembly of the State of Illinois and approved on June 6, 1935, which provides as follows:"

Then follows the reference to the validating act that the Supreme Court of Illinois has declared below in the instant case (see page 26 under Appendix "B" of petition) to be invalid. The conclusion intended to be drawn from the facts thus alleged is in direct conflict with the settled law of Illinois as laid down in the above and many other decisions of the court of last resort of that state.

The record herein fails to show any notice to the taxpayers or any notice to their counsel of this proceeding in the Federal District Court until December 31, 1936, six months after the judgment of the Federal District Court, in this singularly and suspiciously expeditious litigation, was entered on June 30, 1936. Finally, under date of December 31, 1936, a letter was written by the district's at-

torney, B. F. Langworthy, to D. T. Smiley, counsel for the respondent, in which the writer said (Tr. 31):

> "The complaint (in the Federal Court suit) set up the validating act passed by the Legislature in 1939 and approved June 6, 1935, which is found in the laws of 1935, page 1335. The Court held that the validating act was legal following the decision of the United States District Court."

The writer of the letter also said in it (Tr. 32):

> "I believe this last validating act is legal and constitutional, and I also believe that the judgment of the Federal Court is *res adjudicata.*"

The complaint obviously sought to minimize the distinction between the importance of the defects by calling them "irregularities," when in fact the bonds were "*void.*" It is a familiar principle of Illinois law that "irregularities" in tax levy proceedings which are voidable only can be validated by the General Assembly. Likewise, as the above authorities have settled in Illinois, where proceedings are *void* the General Assembly cannot make them valid by a curative act. In the prior *Orvis* case, 358 Ill. 408, 193 Ill. 199, the Supreme Court of Illinois had determined that the claims were *illegal* and *void* and that the bonds issued to pay such claims were also *void.* Perhaps if the taxpayers had had timely notice of the pendency of these proceedings one or more of them might have intervened and pressed upon the District Judge the Illinois decisions, binding on him under the rule of *Erie R. R.* v. *Tompkins,* and obtained a different result. They had no opportunity to do so. This is a particularly good case for the application of the salutary rule limiting the doctrine of *res adjudicata* to contested litigation between the same parties in interest.

Petitioner (on page 13) quotes and italicizes the following from this Court's opinion in *Stoll* v. *Gottlieb*, 305 U. S. 165, 59 S. Ct. 134, 83 L. Ed. 104:

> "*Under it the judgments and decrees of the Federal Courts in a State are declared to have some dignity in the Courts of that State as those of its own courts in a like case and under similar circumstances.*" (Italics supplied by petitioner.)

This case arose out of a Section 77B reorganization proceeding, under the Federal Bankruptcy Act. Not alone does it not support petitioner's contention; but the opinion considered in the light of its facts makes it plain that the case below herein was correctly decided. In the *Stoll* case a corporation had made application for a Section 77B reorganization. *Notice of the proceedings was sent to the creditors, including Gottlieb.* A proposed plan was filed which, among other things, provided for the discharge of certain bonds and the cancellation of a guaranty endorsed on them by Stoll. On notice to Stoll *and a hearing at which he did not appear* the plan was confirmed. The confirmation provided that all creditors should be bound. Gottlieb thereafter sued Stoll in the State Court on the guaranty. Later *he filed a petition in the reorganization proceedings* asking for an order vacating or modifying the orders confirming the plan, on the ground that the District Court did not have power to cancel the guaranty. This petition was denied. No appeal was taken. In the State Court Gottleib recovered a judgment against Stoll, which the latter claimed was in violation of the State Court's duty to accord full faith and credit to the Federal Court decree. This decree was held by this court to be binding on Gottlieb who was therefore not allowed by this court to recover on the State Court's judgment.

We have, in the *Stoll* case, actual notice *to the party sought to be bound* of the proposed plan, *who was himself a party to the record,* and in addition that party *actually litigated the matter on his own behalf,* and after being defeated in the District Court took no appeal. Conversely, does not this *Stoll* case compel a contrary conclusion when the party claimed to be bound, under the doctrine of *res adjudicata,* by a Federal Court judgment *is not a party to the record,* especially as the nominal parties to the record had together an obvious interest adverse to the party thus sought to be bound, the taxpayer?

It is fundamental that the full faith and credit clause does not call for the application of the doctrine of *res adjudicata* against one not a party to the record. More closely analogous to the facts of the present case is *Engelhard* v. *Schroeder,* 278 Fed. 341, affirmed *per curiam,* 258 U. S. 610, 42 S. Ct. 382, 66 L. Ed. 789, where a receiver appointed in a New York proceeding, in which a certain assignment was held void, but in which the assignee was not a party, sued the assignee in New Jersey and was defeated. Thereafter he sued again in the Federal Court. The Circuit Court of Appeals used language suggestive of what was here attempted, both in the Federal Court suit and by the present petition:

> "We are further justified in the conclusion that the filing of the bill in this court was not an effort to right a wrong irremediable in the courts of New Jersey, but rather the attempt of an unsuccessful suitor in one court to possibly obtain a more favorable result in another."

The Federal court proceeding herein represents the attempt of an unsuccessful litigant in the State Court (in the first *Orvis* case) to get a more favorable result in another forum, without even making the interested taxpayer a party.

In *People* v. *C. C. C. & St. L. Ry. Co.*, 300 Ill. 368, 133 N. E. 255, the Illinois Supreme Court, in a case in which, as here, a prior judgment on certain bonds was relied on but held invalid, the Court said:

> "It seems clear that the Village had no authority to issue the bonds upon which the judgment in this case was based, so that the cases cited by appellee are not in point on this question.
>
> "But it is said that this is nevertheless a judgment on these bonds, and that such judgment having been entered and not appealed from cannot be attacked collaterally in these proceedings, but that it stands as a judgment for Village bonds and is not required to be included within the statutory limitations governing the vote of taxation. Taxes, no matter what their nature, purpose or form, except for payment of bonded indebtedness, and interest thereon, are expressly brought within the statutory limitation. This limitation cannot be avoided by permitting obligations other than bond obligations against a city or village to take the form of judgments. To do so would open the door to an evasion of the statutory limit of taxation.
>
> "It being admitted that these bonds were a part of that portion of the improvement which was to be paid by general taxation, the judgment secured on such bonds must be included within the limitation placed upon the village to levy taxes for village purposes. The objection to the excess tax should therefore have been sustained.
>
> "*Where it is sought to levy a tax to pay a judgment over and above the statutory limitation of taxation on the ground that such judgment is one for bonded indebtedness, there is no presumption that such judgment was entered for valid subsisting bonds. If this were true, cities and villages might issue invalid bonds to the constitutional limit and then by consenting to judgment thereon be authorized to levy a tax in excess of the statutory limitation to pay such judgment.*

when they would have no authority whatever to levy any tax over said limit to pay the bonds themselves." (Italics ours.)

None of the citations in the last paragraph on page 13 of the petition herein apply to the instant case. For instance, *Harmon, et al.* v. *Auditor of Pub. Accounts*, 123 Ill. 122, 13 N. E. 161, was a bill filed in the Circuit Court of Ogle County by taxpayers of the town of Mount Morris to restrain the collector and county clerk from collecting any taxes to pay bonds that complainants averred were illegal. The Illinois Court said (on page 136):

"If a contract when made was *valid* under the constitution and the laws of a state as had been previously expounded by its judicial tribunals and as understood at that time, *no subsequent action by the legislature or judiciary can impair its obligation.*" (Italics ours.)

The converse is also the rule as well. Since the Supreme Court of Illinois in the prior *Orvis* case held that the claims *were invalid* and therefore that the bonds were *invalid*, no judgment on the bonds or action of the General Assembly could validate them. Nor could the Federal Court breathe life into them, *as against taxpayers not parties to proceedings in that court.*

In *People* v. *C. B. & Q. R. R.*, 247 Ill. 340, 93 N. E. 422, the Illinois Court stated the general rule on the subject of *res adjudicata* as follows:

"To bring a case within the rule that a former judgment is *res judicata* of the cause of action, it must appear that such former adjudication was a matter *contested* between the *parties*, and if the suit is devised for the purpose of having a certain judgment entered, it will not be binding upon the public or those who were not parties to the scheme."

Was the Federal District Court case contested between the parties to the present proceeding when the pleadings of the District Board of Education practically gave the case away and its attorney did not see fit to notify the taxpayers for six months after the Federal District Court judgment was entered in these hasty and apparently uncontested proceedings? Certainly the taxpayers could not contest the suit when they were not parties, had no knowledge of it, and were not even notified of the entry of judgment until six months thereafter.

In *Pear* v. *City of East St. Louis*, 273 Ill. 501, 113 N. E. 60, also cited by counsel for petitioner, the Court (at page 505) said:

> "*The power of the city to adopt the ordinance is not in question*, and no facts pleaded show the city or its inhabitants have suffered any wrong or injury other than the allegation that the ordinance was not legally adopted. If it was a *valid* ordinance its acceptance by the water company made a valid and binding contract between it and the city and imposed the duty upon the city of performing its part of the obligation." (Italics ours.)

We cannot see that this case bears out the argument of counsel (on page 13) for petitioner. None of the citations (on page 13) bear out the statement that

> "the respondent was bound by the decision of the District Court because he is a taxpayer of the Grant Community High School District No. 124, Lake County, Illinois."

In *People* v. *Wisconsin Central R. R. Co.*, 219 Ill. 94, 76 N. E. 80, the Illinois Court used language pertinent here:

> "But while curative acts may heal irregularities they cannot cure *the want of authority to act at all*

and the Legislature cannot, by retrospective legislation confirm what it could not originally have authorized.

"It is the right of a *taxpayer* to have an opportunity to be heard before a tax shall be finally adjudged against him, and *no tax can be valid* without an opportunity for such a hearing." (Italics ours.)

It must be borne in mind that the *taxpayers* represented by counsel for respondent have been fighting the Board of Education of Grant Community High School No. 124, Lake County, Illinois, all the way through in this matter. This is shown and indicated all through pleadings and record, as hereinbefore set forth. It is not surprising that these *taxpayers* were not notified of the Federal District Court case at the time of the commencement of the suit or of the time of hearing or the judgment until six months had passed from the date of judgment, June 30, 1936.

CONCLUSION.

This is not a case for the exercise of the power to review a decision of a State Supreme Court under *certiorari*. The decision below was plainly right and in strict accord with the local law, in a matter of strictly state cognizance. The only Federal question in the case arises because of the extraordinary proceedings brought by a creditor of the School District (who was not a bona fide purchaser without notice, for he was charged with notice of any defects inherent under the State law) in form against the district, which *having an interest as against its taxpayers to sustain the void levy*, interposed a weak defensive pleading admitting or not controverting substantially all of the factual allegations of the complaint and denying only the conclusion. The taxpayers were not parties. The State law was plain. The earlier State Supreme Court

decision was itself *res adjudicata* against the School District. There is no great public interest or important question involved. The issues are simple and have been determined below upon the basis of the fundamental rules relating to the subject of *res adjudicata*. No conflict of authority appears. There is no occasion for further review and the petition should therefore be denied.

Respectfully submitted,

D. T. Smiley,
Attorney for Respondent.

Nelson Trottman,
Of Counsel.

APPENDIX A

Cahill Illinois Revised Statutes, 1933, Chapter 120, Section 362(2), being Section 1 of the act of February 15, 1928 (Sessions Laws 1928, p. 70), entitled, "An Act to limit the indebtedness of counties having a population of less than 500,000 and cities, townships, school districts and other municipal corporations having a population of less than 300,000," provides, in part:

> "No county having a population of less than 500,000 and no city, township, school district or other municipal corporation having a population of less than 300,000 shall become indebted in any manner or for any purpose, to an amount, including existing indebtedness, in the aggregate exceeding two and one-half (2½%) per centum on the value of the taxable property therein, to be ascertained by the last assessment for State and county taxes, previous to the incurring of such indebtedness, **provided* that any school district having a population of less than two hundred thousand inhabitants maintaining grades nine, ten, eleven and twelve in addition to grades one to eight inclusive, may become indebted at any time for the purpose of constructing and equipping school buildings to an additional amount, in the aggregate not exceeding two and one-half (2½) per centum on the value of the taxable property therein, to be ascertained by the last assessment for State and county taxes previous to the incurring of such indebtedness, after a proposition authorizing such additional indebtedness has been adopted by the legal voters of such school district in accordance with the provisions of section 3 of this Act, * * *"

APPENDIX B

Cahill Illinois Revised Statutes, 1933, Chapter 122, Section 446(13), being Section 1 of the Act of May 1, 1933 (Session Laws 1933, p. 1017), entitled, "An Act to validate certain bonds issued by school districts," provides:

> "In all cases where the governing body of any school district heretofore shall have issued bonds for the purpose of refunding maturing principal or interest, or both, of its bonds which were valid and legal obligations of said district, or has issued bonds for the purpose of funding and paying orders issued for the wages of teachers or any legal claims duly audited and allowed by the governing body, with or without an election, and the bonds and interest coupons so refunded, have been paid and canceled, each such refunding or funding bond issue is hereby validated and recognized as a valid and binding obligation of the school district issuing the same."

APPENDIX C

Cahill Illinois Revised Statutes, 1933, Chapter 122, Section 446(10), being Section 1 of the Act of April 10, 1931, (Session Laws 1931, p. 848), entitled, "An Act authorizing school districts to issue bonds where such bonds, together with the existing indebtedness, exceed in the aggregate two and one-half per cent (2½%) of the value of the taxable property therein, validating acts and proceedings heretofore had providing for the issue thereof and declaring an emergency," provides:

> "In all cases where, prior to March 15, 1931, any school district has provided for the issue of bonds for any purpose now authorized by law, but where such issue of bonds in each such case, in whole or in part, including existing indebtedness, exceeds two and one-half per cent (2½%) of the value of taxable property therein, then any such school district is hereby authorized to execute and deliver said bonds to a purchaser,

notwithstanding the fact that such issue of bonds, including existing indebtedness, exceeds two and one-half per cent (2½%) of the value of taxable property therein. All acts and proceedings heretofore had and done or performed providing for the issue of any such bonds are hereby validated, and when such bonds shall have been delivered and paid for they shall be valid and legally binding obligations of any such school district, *provided, however,* no district shall become indebted for any purpose or in any manner, including such bonds, in excess of any constitutional limitation."

APPENDIX D

Illinois Revised Statutes, 1937, Chapter 122, paragraph 406y (Session Laws, 1935, p. 1336) being Section 1 of the Act of June 6, 1935, entitled "An Act to validate certain School Bonds," provides:

"Whenever any person, firm or corporation shall have rendered services or furnished materials to any school district for the corporate purposes of the district and such services or materials shall have been paid for by or out of the proceeds of bonds issued by such school district with or without an election, and the amount of the claims for such services or materials, together with other indebtedness, exceeded in whole or in part two and one-half per cent (2½%) of the assessed value of taxable property of the district at the time such services were rendered or materials furnished, the issuance of such bonds shall be deemed a validation of such claims insofar as said claims, together with other indebtedness, did not exceed five per cent (5%) of such value at the time they were incurred and at the time such bonds were issued. All proceedings had in connection with the issuance of such bonds are hereby validated and such bonds insofar as the same or the proceeds thereof were used to pay such validated claims are hereby declared to be valid and legally binding obligations of the district."

APPENDIX E

(No. 22345.—Reversed and Remanded.)

THE PEOPLE *ex rel.* Jay B. Morse, County Collector, appellee, *vs.* E. R. Orvis, Appellant

Opinion filed October 24, 1934—Rehearing denied Dec. 13, 1934.

Appeal from the County Court of Lake County; the Hon. Perry L. Persons, Judge, presiding.

D. T. Smiley, for appellant.

Charles E. Mason, State's Attorney, and Okel S. Fuqua, (Charles E. Jack, Edward P. Madigan, and Richard F. Locke, of counsel) for appellee.

Mr. Chief Justice Jones delivered the opinion of the court:

The county court of Lake county overruled the objections of E. R. Orvis, appellant, to certain taxes levied on his property for the year 1932 on account of bonds issued without a vote of the people by the board of education of Grant Community High School District No. 124, in the sum of $55,000. Judgment for sale was entered and Orvis has prosecuted an appeal to this court.

The only question presented is the validity of the bond issue. In December, 1929, a special election was held in the district to vote upon three propositions—*i.e.*, building a school house, purchasing a site and issuing bonds in the amount of $72,000. All three propositions carried and the bonds were issued. A site was purchased and contracts were let for the construction of a school house, including part of the equipment. The board of education ascertained that the proceeds of the $72,000 bond issue would not be sufficient to complete the building and equipment, and after the fund was exhausted by payments and contracts covering that amount the board let additional contracts for extras to an amount in excess of $53,000. On February 16, 1931, it passed a resolution reciting that whereas the district "has outstanding and unpaid certain binding and subsisting legal obligations to the amount of

$55,000" and no funds with which to pay the same, bonds to that amount dated March 1, 1931, be issued, and "that simultaneously with the issuance of these bonds there be paid and canceled a like amount of binding and subsisting obligations now outstanding." The bonds were issued without submitting the proposition to the voters of the district.

Out of an aggregate of $53,572.33 of indebtedness the W. M. Welsh Manufacturing Company had a claim of $1,694.89 for equipment furnished. On April 27, 1931, it instituted suit in the circuit court against "the Grant Community High School District No. 124" for $55,000. A *narr.* with common counts was filed. An attached affidavit of claim in the amount of $53,572.33 recited that the demand was for "goods, wares and merchandise sold and delivered, money lent and advanced, money paid out and expended," without stating to or by whom the goods were sold or the money lent or advanced. On the same day, judgment for $53,572.33 was entered upon the confession of the defendant. On May 8, 1931, the board authorized the payment of the claims out of the proceeds of the $55,000 bond issue. The claims were paid and on May 13, the judgment was satisfied of record.

The validity of the bonds is challenged by appellant on the ground that they are based on illegal and void debts which the board had no authority to contract, and because they were issued without submitting the proposition to the legal voters of the district. Appellee contends there is no evidence of the invalidity of the claims funded by the bonds, and that the bonds were issued pursuant to an act of April 30, 1931, (Cahill's Stat. 1933, chap. 122, par. 446(10), which made an election unnecessary. The first section of that act provides that "where, prior to March 15, 1931, any school district has provided for the issue of bonds for any purpose now authorized by law," and such bonds, including existing indebtedness, exceed two and one-half per cent of the value of taxable property therein, then any such bonds may be executed and delivered to a purchaser notwithstanding such excess. All prior acts and proceedings for the issue of any such bonds are validated,

provided no district shall become indebted in excess of any constitutional limitation.

Appellee further relies upon the so-called validating act of May 1, 1933. (Cahill's Stat. 1933, chap. 122, par. 446(13). The pertinent part of section 1 of the act provides: "In all cases where the governing body of any school district * * * has issued bonds for the purpose of funding and paying * * * any legal claims duly audited and allowed by the governing body, with or without an election, and the * * * legal claims so funded, have been paid and canceled, each such * * * funding bond issue is hereby validated and recognized as a valid and binding obligation of the school district issuing the same."

The resolution calling the special election on the question of building a school house and issuing bonds for $72,000 did not limit the cost of the building to that amount. It provides for a building to cost not less than $72,000. Neither the notice of election nor the ballot contained any suggestion that the entire cost was to be covered by the amount of the bond issue. The board was not required to submit to the voters the cost of the building to be erected, and if in its judgment the amount of the bonds authorized to be issued was not sufficient to meet the cost of the building required, the board had the power to levy taxes within the statutory limit for building purposes to make up the difference. (*Hartmann* v. *Pesotum School District*, 325 Ill. 268; *People* v. *Scott*, 300 *id.* 290; *People* v. *Crear*, 300 *id.* 611; *People* v. *St. Louis, Alton and Terre Haute Railroad Co.*, 230 *id.* 61; *People* v. *Peoria and Eastern Railway Co.*, 216 *id.* 221; *People* v. *Chicago and Texas Railroad Co.*, 223 *id.* 448.) By the statute then in force (Cahill's Stat. 1929, chap. 122, sec. 189[1],) the limit of tax levies without an election for building purposes by districts of less than 200,000 population was three-eighths of one per cent of the value of the taxable property in the district. The board levied a tax for building purposes, the amount of which is not shown, but the $53,572.33 of debts contracted was paid out of the proceeds of the $55,000 bond issue. It cannot be said that

[1] *Sic*; This is a misprint in the text of the opinion. The section number in Cahill's Statutes is 313.

any part of the claims was provided for by the levy for building purposes. While a school board may complete an unfinished school building by means of annual tax levies within the statutory limitation from year to year until the building is completed, (*People* v. *Chicago and Texas Railroad Co., supra,*) it does not follow that the board may incur a debt beyond the statutory limit and then attempt to provide for its payment either by tax levies or a bond issue.

Under the act of 1928 (Cahill's Stat. 1933, chap. 120, par. 362(2), school districts with a population of less than 200,000 are prohibited from becoming indebted to an amount in excess of two and one-half per cent of the value of the taxable property in such district without an election. Beyond that limit, counting the $72,000 bond issue but not the obligations to be paid therefrom, the board might not lawfully contract. It seems to be conceded that the statutory limit of two and one-half per cent was exceeded by the incurring of the indebtedness of $53,572.33. It is virtually admitted by the attempt to issue the bonds under the act of April 30, 1931. In the trial court appellee's counsel admitted the assessed value of all taxable property in the district was $2,677,520, which would place the indebtedness far beyond the two and one-half per cent limit prescribed by the law of 1928. Therefore, in whatever amount the claims exceeded that limit they were illegal. Analyzing the terms of the 1931 act, it is readily perceived that the statute would apply where the board anticipated the need of funds for a lawful purpose and provided for a bond issue in advance of incurring any debt beyond the statutory limit. It is equally manifest that the authority to issue bonds in excess of the two and one-half per cent limit, for any purpose now authorized by law," does not authorize the issue of bonds to pay claims in excess of the statutory limit. Their payment was not a purpose authorized by law. The $55,000 bond issue was therefore not within the terms of the 1931 act.

There is another reason why that act is not applicable. It merely removed the two and one-half per cent limitation, in cases coming within its terms, as to bonds issued

under the act after its passage, pursuant to antecedent proceedings. It does not expressly or by implication purport to authorize the issue of bonds without a vote of the electorate. It does not in any manner deal with that question. The whole scope and purview of the act are confined to the removal of the limitation in amount as to bonds thereafter issued under its provisions.

The remaining question is whether or not the bonds in controversy were validated by the act of May 1, 1933. If the curative statute is otherwise valid, it could, under its terms, be applied in this case only on the theory that the bonds were issued "for the purpose of funding and paying legal claims." Inasmuch as the claims paid were illegal, the statute has no application to bonds issued for their payment. Whether or not the validating act is void as attempting to validate bonds issued in contravention of existing law requiring the proposition to be submitted to a vote is unnecessary to be considered. Neither is it necessary to consider the validity or effect of the judgment entered against the district. It is conceded by all parties that the several claims, and not the judgment, were the basis of the bond issue.

The judgment of the county court is reversed and the cause is remanded, with directions to sustain the objections of appellant.

Reversed and remanded, with directions.